

c. Within 30 days following the first day of operation of the CPMMS, Defendant shall perform certification tests and, within 30 days following completion of such tests, Defendant shall provide to U.S. EPA, for purposes of U.S. EPA's approval and certification of the CPMMS, all data (including all test results) developed by Defendant to demonstrate that the CPMMS satisfies all of the certification requirements set forth in the CPMMS Protocol (Appendix D).

d. After the CPMMS is operational on each of the Facility's emission points (stacks) and certification testing is completed, Defendant shall demonstrate continuous compliance with the emission limits established pursuant to Paragraph 14.b.(2) of this Consent Decree, using the emission measurements provided by the CPMMS.

e. No later than the 30 days following the last day of each calendar quarter, starting with the calendar quarter in which U.S. EPA certifies the CPMMS, Chemetco shall submit to U.S. EPA and IEPA a report, using the data obtained from the CPMMS (in standard units of measure and the appropriate averaging time), of all one-hour periods of emissions that are in excess of the emission limitations established pursuant to Paragraph 14.b.(2) of this Consent Decree. Each such report shall include the date, time and magnitude of excess particulate emissions, statements as to the probable cause of the excess emissions, descriptions of the corrective action(s) that may have been undertaken by Chemetco, and information as to the periods of and reasons for non-operation or malfunction of the CPMMS, if appropriate.

f. Until this Consent Decree is terminated, U.S. EPA will review and evaluate the excess emission reports required by subparagraph "e" of this Paragraph, and any other monitoring reports or incident reports provided to U.S. EPA by Defendant, and will determine, based on those

reports, whether violations of this Paragraph have occurred: Provided, recorded and reported excess emissions solely attributable to a malfunction of the CPMMS shall not form the basis of a claim for stipulated penalties under this Consent Decree.

g. Chemetco shall be subject to a stipulated penalty of \$500 per day for violations of any provision of this Paragraph.

19. Election of Optional Stack Testing and Potential Operational Restrictions. The following provisions shall apply to the performance of stack tests if either party concludes that the CPMMS or the data derived therefrom is unreliable:

a. At any time following 180 days after the U.S. EPA's certification of the CPMMS under Paragraph 18.c., U.S. EPA may require, or Defendant at its discretion may perform, a Stack Test on a particular emission point (stack) if:

(1) U.S. EPA has demanded stipulated penalties under Paragraph 18.f. for more than two consecutive calendar quarters;

(2) the CPMMS for a particular stack has malfunctioned for more than 25% of the calendar quarter; or

(3) U.S. EPA and Defendant disagree on the validity of the information set forth in the reports required under Paragraph 18.e. of this Consent Decree.

b. Should U.S. EPA require the performance of Stack Tests under the provisions of Paragraph 19.a., such Stack Tests shall be initiated within 60 days following Defendant's receipt of U.S. EPA's written notification that Stack Tests must be conducted.

c. The provisions of Paragraph 16.f. and 16.g. of this Consent Decree,

applicable to Baseline Stack Tests, shall apply equally to any Stack Tests that may be performed under this Paragraph.

d. Should a Stack Test conducted under this Paragraph demonstrate that a combination of Furnace Modes has exceeded an emission limitation for a Process Emission Unit established pursuant to Paragraph 14.b.(2) of this Consent Decree, and such exceedance is not the result of a Malfunction, Defendant shall stop operation of such Furnace Mode combination immediately upon receipt of the Stack Test results (but no later than fifteen (15) days after the last Stack Test date) except that:

(1) Defendant, upon written concurrence of U.S. EPA, may engage in full operation of the subject Furnace Mode combination, without incurring a penalty, only for the purposes of conducting retests to identify which Furnace Mode or Modes caused the emissions limitation to be exceeded, and the emissions reduction impact of remedial measures or changes to Furnace Charges: Provided, operations under this subparagraph shall not exceed fourteen (14) days without the written approval of U.S. EPA;

(2) If a Furnace Mode combination is shut down or its operations restricted pursuant to this Paragraph, unlimited operation of the subject Furnace shall not recommence until all of the following occur:

(a) Defendant certifies to IEPA and U.S. EPA that it has completed construction of or improvements to the air pollution control devices or changes in Charges;

(b) U.S. EPA receives the results of completed emissions tests that demonstrate compliance with the emissions limitations established pursuant to Paragraph 14.b.(2) of

this Consent Decree, and

(c) Defendant pays any stipulated penalty that may have accrued under this Paragraph.

e. Defendant shall pay stipulated penalties of:

(1) \$500 for each day that a Stack Test, the performance of which is required by U.S. EPA under Paragraph 19.a., is not timely conducted, beginning on the 60th day following Chemetco's receipt of a written notification under Paragraph 19.b.;

(2) \$2500 per day for violations of Paragraph 19.d.

20. Governance of Stack Test Data Instead of CPMMS Data.

a. If either U.S. EPA or Chemetco elects to impose a Stack Test requirement pursuant to Paragraph 19.a, the data generated through such Stack Tests (as opposed to any data generated by the CPMMS) shall govern, for a period of 12 months beginning on the date that U.S. EPA receives the Stack Test report (See Paragraphs 16.f. and 19.c.) , Chemetco's compliance with the emission limitations established pursuant to Paragraph 14.b.(2) of this Consent Decree.

b. During any 12-month period described in Paragraph 20.a. , Defendant shall ensure that the Daily Weighted Average of lead and zinc percentages of each charge, as maintained in the Raw Material Data Base, do not exceed those percentages determined for each of the materials utilized to create the Recipes for Furnace Charges processed during the Stack Tests demonstrating compliance with air emissions limitations established pursuant to Paragraph 14.b.(2) of this Consent Decree.

c. (1) Defendant has installed new air pollution control devices on the

emission points (stacks) for the Hartford Facility's four rotary Furnaces.

(2) Defendant has equipped each new air pollution control device with appropriate monitoring and recording devices, including, but not limited to:

(a) continuous pressure drop monitors and recording devices for all new active air pollution control equipment; and

(b) continuous scrubbant nozzle pressure monitors and recording devices for all new active air pollution control equipment.

d. During any 12-month period in which stack test data shall govern Defendant's compliance with the limitations established pursuant to Paragraph 14.b.(2) of this Consent Decree (See Paragraph 20.a.), the data derived from the monitors described in preceding Paragraph 20.c.(2)(a) and (b) shall be used in lieu of the data derived from the CPMMS to assess Defendant's compliance with the limitations established pursuant to Paragraph 14.b.(2) of this Consent Decree.

e. Defendant shall operate the control device systems at all times following the initial baseline stack tests within the established baseline operating ranges

f. Defendant shall calibrate, operate, and maintain all new air pollution control devices and all continuous monitoring and recording devices in a manner that ensures accurate and precise operation.

g. During any 12-month period in which stack test data shall govern Defendant's compliance with the limitations established pursuant to Paragraph 14.b.(2) of this Consent Decree (See Paragraph 20.a.), Defendant shall collect and record the following information for each new air pollution control device system as each such device becomes operational:

- (1) Continuous pressure drop monitoring data and continuous scrubbant nozzle pressure monitoring data;
- (2) Operating times for each Furnace control device system, associated monitoring equipment, and each Furnace;
- (3) Records of all routine and non-routine maintenance performed on each control device system and associated monitoring equipment, including dates and duration of any outages; and,
- (4) The date, duration, cause, and response to all periods of operation during which the pressure drop of the control device system is outside of the baseline range established during the baseline stack test.

h. Defendant shall maintain for at least three years the information collected pursuant to Paragraph 20.g.

i. Defendant shall pay stipulated penalties of \$500 per day for each violation of any provision of Paragraph 20.e. thru 20.h.

21. Maintenance of Ambient Air Quality Standard

a. Beginning with the first full calendar quarter following entry of this Consent Decree, Defendant shall not violate any applicable ambient air quality standard for lead or particulate matter required by IPCB Rule 102 (See 35 Ill. Adm. Code §§ 243.126, 243.108), as demonstrated by the approved ambient air monitoring program at the Facility.

b. Defendant shall carry out immediately and in their entirety the terms of the Facility's IEPA-approved Ambient Air Monitoring Program dated August 1993, as revised (which is

incorporated herein by reference), including but not limited to:

- (1) Compliance with all requirements for sampling, validation, location, analysis, operating procedures, maintenance, calibration, data reduction, reporting, quality assurance, monitoring methodology, and instrumentation;
 - (2) Collection of enough samples to ensure the compilation of valid quarterly emissions data, as set forth in the terms of the approved ambient air monitoring program;
 - (3) Refraining from any and all actions that could potentially undermine the efficiency or accuracy of the approved ambient air monitoring program, including but not limited to the construction, placement or use of water screens or spraying devices at or near the Facility's ambient air monitors;
 - (4) Not moving the Facility's ambient air monitors, without prior written approval from IEPA and U.S. EPA;
 - (5) Not deviating from the approved ambient air monitoring program without prior written approval from IEPA and U.S. EPA; and
 - (6) Continuing to submit the results of the ambient air monitoring program to IEPA and U.S. EPA on a quarterly basis within thirty (30) calendar days of the end of each quarter.
- c. Defendant shall continue the approved ambient air monitoring program until:
- (1) Defendant demonstrates to IEPA and U.S. EPA that it has been in compliance with the NAAQS for lead for a period of twelve (12) consecutive calendar quarters after entry of this Consent Decree; and
 - (2) Defendant receives written notice from U.S. EPA that Defendant may

cease the approved ambient air monitoring program.

d. Defendant shall pay the stipulated penalties set forth below for violations of the provisions of this Paragraph not caused by a Malfunction:

(1) \$1,000 for each violation of a quarterly NAAQS arithmetic mean limitation;

(2) \$5,000 for each violation of an annual NAAQS arithmetic mean limitation; and

(3) \$1,000 per day for each day that Defendant fails to comply with the approved ambient air monitoring program.

V. AUDIT REQUIREMENTS

22. Nothing in this Consent Decree shall be construed to limit or otherwise affect the right of U.S. EPA to conduct and resolve any audit, or render any report authorized pursuant to the Inspector General Act of 1978, Pub.L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, 5 U.S.C. App. 3.

VI. CIVIL PENALTY

23. Defendant shall pay a civil penalty in the amount of \$305,267 in full satisfaction of the United States' claims for civil penalties as alleged in the Complaint through the date of lodging of this Consent Decree, recognizing that Defendant has previously paid \$305,000 to the State of Illinois. Defendant shall pay \$150,000 of the civil penalty amount within thirty (30) days following the date of entry of this Consent Decree, and shall pay the remaining \$155,267 within 12 months of the date of the first payment. The payments will be made by Fed Wire Electronic Funds Transfer ("EFT") to the

Department of Justice Lockbox Bank in accordance with specific instructions to be timely provided to Defendant upon entry of this Consent Decree and will reference DOJ Case No. 90-5-2-1-1845; United States Attorney, Southern District of Illinois, File No. 1998V00228. Funds received at the Lockbox Bank after 11:00 a.m. (Eastern Time) will be credited on the next business day. Defendant will advise the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Illinois at the time payment is being wire-transferred. In addition, Defendant will confirm to U.S. EPA and the Department of Justice that payment has been made in accordance with Section X (Notices and Submissions). Interest and late charges will be paid as specified in Paragraph 24.

24. Commencing thirty (30) days after the date this Consent Decree is entered, interest shall accrue on the penalty, or any portion thereof that is overdue, at the rate set by 31 U.S.C. § 3717 and shall continue to accrue until the penalty is paid. A late payment handling charge of \$20.00 shall be imposed after thirty (30) days, with an additional charge of \$10.00 for each subsequent thirty (30) day period over which an unpaid balance remains. In addition, a six (6) percent per annum penalty shall be applied on any principal amount not paid within ninety (90) days of the entry of this Consent Decree.

25. Upon entry of this Consent Decree, the civil penalty provided for in this Section shall be a debt owed to the United States. Collection of this debt shall be subject to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.*

26. Chemetco shall not deduct its payment of the civil penalty provided for in this Section for any tax purpose or otherwise obtain any favorable tax treatment of, or for, such civil penalty payment.

VII. STIPULATED PENALTIES

27. The stipulated penalties herein shall be in addition to, and shall in no way limit, other remedies or sanctions available to the United States by reason of the Defendant's failure to comply with the requirements of this Consent Decree, the CAA or the Illinois SIP. However, if the United States collects a stipulated penalty from the Defendant under this Consent Decree and subsequently seeks and is awarded a monetary penalty under the CAA or the Illinois SIP for the same act or omission, the Defendant shall receive a credit against the judgment for the amount of the paid stipulated penalty.

28. Failure by the United States to demand stipulated penalties shall have no effect on the accrual of such penalties.

29. a. Stipulated penalties are due by the 15th day of the month following the month in which the violations occurred or in which U.S. EPA made a stipulated penalty demand under the provisions of this Consent Decree.

b. Payments of Stipulated Penalties shall be made in accordance with the procedures set forth in Paragraph 23.

c. At the same time Defendant submits a payment of stipulated penalty, Defendant shall send a letter to U.S. EPA, the U.S. Department of Justice, and IEPA notifying those entities of the payment of the stipulated penalty and identifying the case name, court, docket number, specific stipulated penalty provision involved, and a description of the violations of this Consent Decree for which the stipulated penalties were tendered.

d. The United States may, in its discretion and not subject to judicial review,